

ARGENTINE CONSTITUTIONAL IDEAS

ADDRESS

DELIVERED BEFORE
THE

AMERICAN BAR ASSOCIATION

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OCTOBER 22, 1914

BY

THE HONORABLE RÓMULO S. NAÓN

AMBASSADOR FROM ARGENTINA TO
THE UNITED STATES



PRESENTED BY MR. FLETCHER

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ARGENTINE CONSTITUTIONAL IDEAS.

Address by the Honorable Rómulo S. Naón, Ambassador from Argentina to the United States, October 22, 1914.

GENTLEMEN: It behooves me first of all to say to you that I shall always cherish as one of the most expressive manifestations of the regard in which the moral activities of my country are held by the American people, my having had the privilege of addressing your association, which maintains and stands with so much dignity for the essential principles which have placed the United States in the front rank of the most efficient political organizations of the world.

I know of no occasion where it would be more timely for me to speak on my country than on this so kindly tendered to me by your eminent president; and there is no subject I consider more appropriate for reaffirming our characteristic as a people of ideals than that which I have chosen for my address to you to-day: "Argentine constitutional ideas."

It is not my aim to treat this subject from the standpoint of a doctrinarian in constitutional law, but rather to present to you as clearly and comprehensively as time and circumstances will permit, the sentiments, the principles, and the ideas which underlie the formation and development of the political entity called the "Argentine Republic."

These sentiments, these principles, and these ideas have continued to be maintained and have inspired and assured our progress through all the vicissitudes of our organic life. They were the permanent aspiration of the Argentine people until they became crystallized into the precepts of our wise constitution, into the system of legislation which rules the regular life of the Republic, into the characteristics of our social life and of our civic activity, and, finally, into the action of profound humanitarianism which has always distinguished our international political conduct.

The Argentine citizen lives his life under the domination of a sentiment of national pride and self esteem which he can not overcome and which some might consider and have already considered as a manifestation of hypertrophy of personality. I beg of you to excuse this weakness if you note it in me when I say that I entertain the hope that when I conclude my brief exposition you will find justification for the aspiration which every Argentine citizen entertains when he believes as a national conviction that it is our manifest destiny to make of the country by the endeavor of her sons and the moral cooperation of mankind, a democracy of the highest social and political distinction.

The Argentine constitution was the product of hardships extending over a long period, and it has therefore consecrated all the social

ideals which agitated the Argentine spirit from the moment the idea of our political emancipation was born. We can not begin the development of the subject without first taking up the preamble of that constitution. It dominates and embraces, giving utterance thereto with eloquent simplicity, all those hardships which have not yet disappeared in spite of our achievements and which maintain in the national spirit the eager desire to realize the aspirations which have not yet been fulfilled, or to improve to the utmost what are already a part of our national qualities.

This preamble represents the most authentic expression of our aspirations to form an organic social entity, and makes of our constitution rather than a body of more or less strict rules of conduct, a body of principles, an enunciation of political ideals. Its elasticity, and, therefore, its capacity of evolution is so great as to enable it to satisfy all the social tendencies which appear to have been imposed by mankind upon the political organization of modern nations. All the exigencies of good government, all the necessities of a wise and fruitful social administration are to be found there directing the organic national life with the irresistible force always encountered in principles for peoples who live of, by and for them. All the impositions of the social moment and all the demands of the spirit of the times find there also a possibility of adaptation to those principles applied to the development of the activities of a people with sufficient moral and intellectual capacity to understand them, to interpret them and to practice them.

We have already lived for 70 years under the guidance of our constitution and have formed in its observance our political habits and have inspired in the spirit of its provisions the achievement of our civic ideals.

But the long and arduous road traveled has served solely to strengthen it and cause it to continue to be as at the beginning, with the same intensity, the highest and most perfect source of our patriotism, as well as the instrument for the adequate working out of all problems affecting our political life.

It might also be said that for an Argentine does not exist the moral possibility of applying his activity as a citizen in the life of the Nation, without bearing in mind the idea of the constitution and of its principles, which impose themselves on his understanding and on his will as the beginning and as the end of his action. By this I mean to say that as a matter of fact the first sentiment of an Argentine, the highest expression of his patriotism, is respect for the constitution, a respect which is almost fanatical and which forms in his mind the notion of a wrong when its principles are violated.

This notion, when extended to all citizens, produces as a result a national civic morality in the masses which prompts them to make any personal sacrifice for the moral prestige of the country. This sentiment is so predominant that even in the course of our international life has it spontaneously appeared. It also produces a constant demand of the people upon the Government, and becomes a permanent control of public opinion upon all public officials as well as upon the action and conduct of their statesmen. Hence it has become a characteristic, even more, a need, of the Argentine "public man" to sound the very depths of the national conscience in order to adjust to its dictates his directing conduct in public life.

It is for this reason that the Argentine "public man" is, wherever he may be exercising his activities and in spite of the physical distance which separates him from his country, an instrument of his people for the realization of the organic aspirations which dominate them and is an interpreter of their capacities and collective desires. His individual personality does not exist. His personal aspirations are submerged in his devotion to his country. His obsession is to reflect the national personality which he feels in himself as a citizen and as a public official. Hence also this other sentiment which dominates the "public man" as a necessity of his life, namely, forgetfulness of self, which our great "public men" have practiced to the utmost, seeking to make themselves worthy of harboring the only absorbing passion of which their moral conscience is capable, the pride of recognizing in themselves a genuine Argentine incarnation.

Both sentiments, that of collective Argentinism, which characterizes our masses, and that which distinguishes and determines the life and action of our "public man," has been embraced in the constitution, and especially in its preamble, in the recognition of the fact of a "national entity," and "Argentine people," and the necessity of the "public man" to interpret that people, and to fulfill its precepts in creating for that purpose the idea of political representation. The preamble of our constitution begins with the following words, which are full of meaning to one acquainted with the historical development of our Republic: "We, the representatives of the people of the Argentine nation," that is to say, "we" who are vested with authority emanating from the only sovereign entity constituted by "the people" of the "nation." Observe, gentlemen, the preexisting notion of a "nation"; the notion and the sentiment of an "Argentine people"; the notion and the sentiment of a collective entity with an organic life which manifests itself through that other personal entity "we," that is to say, the "public man," an institution created in our democracy as a consequence and as an organ of the representative system, and whose dignity and importance, and whose authority are based on that other entity, the sovereign entity "people"—the "public man," who devotes himself without reservation to the service and the glory of the "people."

The touchstone which we have had in order to bring to ourselves the realization of the virtues of our constitution has always been that drafted by the great framers of your Constitution of 1787, and whenever we wish to show clearly in the analysis of ours this idea of preexisting "national personality," we place beside those opening words of our preamble the words of the preamble of the American Constitution: "We, the people of the United States." Note the difference. In both is present the collective idea, the existence of a people; but in one of them the "public man"—"We, the representatives"—acts, discharging the representation of the "people," who have previously at a constituent convention designated them to organize the forms of the government which was to rule thereafter the organic life of a "nation" which had been in existence ever since independence had been attained.

In the other, the people of the States are those who act, they themselves framing the Constitution, inasmuch as its force is subject to their approval, and the "people" not of an existing "nation" but of sovereign States which sought to establish a closer union. The

former organize a "nation" which had already existed through the organ of their "public men," vested originally with the "national sentiment" which inspires them, in their patriotic labor, with the recollection of glories and hardships experienced during the period of 40 years of "national" sacrifices. The latter, the plenipotentiaries of autonomous entities, seek a constitution not inspired by a "national" sentiment, which did not exist, but to form a "union" later to be converted, notwithstanding any local sentiment, into a "national" entity by the strengthening of the "more perfect union" which the sanction of the constitution assured.

Both constitutions conformed to the political necessities of each people, and the words of the two preambles reflect the diversity of those necessities: "We, the representatives of the people of the Argentine nation," and "We, the people of the United States"; and both at the same time that they express two different political sentiments also express two constitutional ideas which are likewise different.

The Argentine constitution expresses in the words quoted the sentiment of the "nationality" which has always maintained in all minds, even during periods of internal dissension, the constitutional idea of national unity. On the other hand, the American Constitution expresses in the words quoted, not the sentiment of a "nationality," but the sentiment of the locality, the sentiment of the local State, which was at the same time the constitutional idea on which its federalism was based. And so, two Federal republics like that of the United States and that of Argentina show their different origin, one evolving by the union of its different entities toward "national consolidation" and the other evolving toward the organization of the local governments, in order to satisfy the regional exigencies of the constitutional idea of "national unity."

I deeply regret that the nature of this address will not permit of my analyzing before you all the curious and interesting political consequences which that difference of antecedents in our two republics has produced.

In addition to these two original sentiments of a sovereign "people" with a "national" conscience and the existence of a body of representatives, the "public man" or the "representative man," created for and destined to the service of the interests of that people and to the achievement of their "national" aspirations, the political sociologist will find another essential sentiment which has always constituted one of the most fundamental and characteristic principles of our national organization. I refer to a profound humanitarianism which has always been reflected and has become a constitutional idea and an Argentine principle of legislation. It has also prompted, aside from the manifestations of internal organic life, the broad and generous Argentine international policy closely observed even at times and under circumstances which tended little to the preservation of a disinterested and altruistic policy.

This sentiment is expressed in the same preamble when in setting forth the purposes of the representatives of the people in enacting the constitution it says:

To constitute the national union, guarantee justice, assure internal peace, provide for the common defense, promote the general welfare, and assure the

benefits of liberty for ourselves, for our posterity, and for all men of the world who wish to live on Argentine soil.

This was without doubt a clear expression of the social tendencies of our revolution of independence which established from the first moment, together with the abolition of slavery, the principle of political equality of all men born in our territory, that of equality of civil rights for all inhabitants, whether natives or foreigners. There is no constitution which establishes as a fundamental principle that humanitarian tendency for the entire system of legislation more broadly than the Argentine constitution.

The exercise of the activity of a man and his liberty when the achievement of his own welfare and aspirations is involved is limited only by the exercise of the activities and the liberty of others without any distinction other than that emanating from the difference in their personal capacities. This humanitarian sentiment has always prevailed in our tendencies, in our customs, and in our laws. At the same time that it recognizes and practices that all men are created equal, it makes of the consideration and respect arising from this equality a sentiment of human fraternity, which in turn gives rise to that real social and political democracy that makes all also equal in benefiting by opportunities in proportion to the capacities and virtues of each, and likewise the country as a whole as the result of the free and fertile activities of those individual capacities and of those virtues.

Such is the nature and character of the Argentine democracy, of that Argentine democracy which is not only a principle of our internal political organization, but also an inborn sentiment in our life as an international entity, a sentiment which instills in us a feeling of absolute equality in our relations with all the nations of the world, and, consequently, the consciousness of our duties in the work of civilization and universal progress.

Hence it is that in the same manner that the principle of democracy is the foundation of our political organization, the sentiment of international democracy is the foundation of our international policy. This principle is so closely associated with our personal activity as citizens and our international activities as a sovereign people that even a casual observer could easily note it even in the most inconsequential manifestations of our individual or collective life. The sentiment of political equality and of social equality of an Argentine citizen in his relations with others is like the sentiment of international equality of the Argentine Republic, a sentiment which does not admit either of neglect or indifference, not to speak of ignorance thereof. It is a sentiment under permanent tension, an aggressive sentiment whose powerful dynamic force characterizes and defines the entire movement and development of our system of legislation and all the pride of our national character which is as intense as our respect for the rights of other peoples and the generosity and altruism characteristic of our foreign policy. This sentiment is responsible, furthermore, for the spirit of optimism which characterizes our people, instilling in them the firm conviction that there is nothing which can not be overcome by our efforts; that there is no ideal which can not be attained by our will.

The principle of our activity as citizens was expressed long before the enactment of our Constitution by our greatest political sociologist,

the author of the "Socialistic Dogma of the Revolution of May," in these words, which before their enunciation were an instinct of the civic action of every Argentinian and afterwards a gospel, the feeling for and observance of which constantly grew:

Men have no real value in politics except as artisans for the production or realization of social ideas. We do not conceive any progress for the country except under the condition that the initiative in thought and social action be taken by the best and most capable; and by the best and most capable we understand those who represent the purest virtues and the highest intelligence.

But this formula was at the same time the expression of that civic instinct expressed in the action of citizens who had been directing the political life of the country ever since the revolution of independence, an action which became synthesized in the last words of Moreno, that great civil genius, the inspiration and soul of our revolution of emancipation, when he cried with his last breath: "Long live my country even though I perish," or in the words of San Martin, its great military genius, uttered when he withdrew from public life after having consummated the liberty of three republics, worthy of the virtues of a great people: "The presence of a fortunate soldier is always a danger for the institutions of a country in course of formation." Besides, the sentiments which these words express are not an exception in the public life of our great men, but the rule, and you know that public men are always the exponents of and reflect the moral forces of a people.

Together with those instincts of moral eminence which characterize the permanent ideal of an Argentine as a citizen, there springs the profound knowledge of our national greatness which has also been an inborn patrimony of our thought and was expressed with the same candid conviction when we came to independent life, or when we were succeeding in the struggle for national organization, or at the present moment when we feel a personality already vested with attributes of all kinds to act in the front rank with the most advanced in the struggle of civilization. That also was the sentiment which inspired our great bard to exclaim, when the vision of Argentine independence was germinating in the spirit of our people, that verse of intense patriotic aspiration: "Silence, the great capital of the south, is appearing," and the words, later made a part of the Argentine national anthem, which are repeated and felt every instant with deep emotion in our great epopees as an axiomatic truth by all of my compatriots: "To the great Argentine people, hail!"

In brief, I might affirm that the essential idea, the basic idea, of our political life, the principal Argentine constitutional idea is "democracy." Democracy founded on an unshaken conviction of equality and civic fraternity and of equality and international fraternity, and developed upon a representative system of government which at the same time that it recognizes the superior existence of a "people" with aspirations and a "national" consciousness forms also a basic element, the Argentine "public man," representing all the moral ideas of that "people," developing his directive action as an interpreter of the popular conscience and exigencies, the visionary of a glory which only the patriot and the democrat can feel, the glory of achieving a name, no matter how modest, in the history of the progress of his country.

This essential idea rests likewise on the basis of a preexisting collective instinct, the instinct of nationality, but stimulated by the necessity of individual realization which animates our constitutive elements determining the conscience of the citizen, and by the necessity of partial collective realization, which led to defining, more and more, after our independence, the life of the local entity of our Argentine Provinces.

The sentiment of local autonomy which underlay the internal struggle for its recognition, and which after becoming defined and strengthened during 40 years of efforts and untold hardships, was recognized by the framers of our fundamental charter, was, as a matter of fact, the origin of this other constitutional idea—Argentine federalism—which was affirmed as the principle on which our politico-administrative organization was to be based. This other Argentine constitutional idea was adopted not as the result of a capricious and theoretical speculation, but as the result of a popular sentiment which had overcome all previous efforts at organization that had failed to recognize it.

There can be no democracy where ignorance reigns, ignorance not being compatible with the morality and with the ideal which are essential elements of democracy. Nor can there be a democracy, or at least it can not produce the organic political activity indispensable in the stimulation of national life, when civic indifference prevails, diverting the citizen from his interest in public affairs or keeping him from the polls, where the powers of the Government are organized and the scope of its action fixed as called for by the national interests. Hence, two more constitutional ideas: Compulsory primary education and the compulsory vote. They have not been in fact literally prescribed by the fundamental charter, but they have been imposed by it in principle, and fully regulated and defined by special legislation.

Compulsory primary education seeks to equalize as far as possible the mental capacity of our citizens in order to place them in such position that the civic life of the country may not be turned over to the blind passion of more or less self-interested bosses, but may develop rather as a consequence of a direct consideration of the problems concerning the life of the nation by the average mental capacity of the masses.

By the adoption of the compulsory vote it has been sought to remove the dangers of civic atony. Among us compulsory common education has always prepared our citizens for the struggle of life, giving them the means of obtaining a more or less broad understanding of the general notions essential in modern society to efficient action. The compulsory vote is impressing upon them the need of familiarizing themselves with the principles which personify national "public men" with the exigencies of the policy and administration of the country. In this way they are able to influence the action of those "public men," compelling them either to define their principles by discussion in the electoral campaigns or to apply them in official positions, and enabling them to control the action and correct the errors of the Government by an intelligent and patriotic opposition.

These principles are supplemented: Compulsory education by the removal of every religious influence from the public primary school, thus leaving the work of forming and developing a religious sentiment to the family and home; the compulsory vote, by providing for a secret ballot in order to avoid the corruption which might result from the weakness of character in the voter.

Our constitution has recognized to such a degree the impossibility of attaining our democracy except upon the basis of the mental preparation of the citizen that it has provided in one of its provisions relating to the political existence of the "Federal States" the requirement that their local constitutions assure administration of justice, municipal government, and primary instruction therein as a condition precedent to guaranteeing them the enjoyment and the exercise of their institutions.

All these antecedents are the result of a sentiment of fruitful liberalism, which has always controlled the development of our organic life. It has injected into every constituent or legislative act a principle of activity and progress so intense in its nature that more than once it has brought us to the point of considering respect for the administrative or political traditions as contrary to the interests of the nation. It might almost be asserted that the only tradition which persists in the Argentine mind as a force of permanent inspiration, and which can not be overcome, is the tradition of the glories and ideals of the revolution and of the principles which gave them birth.

Perhaps an explanation of this peculiar circumstance may also be found in the fact that that revolution put an end to the nonpolitical existence of the people and to a public administration organized upon the principle of the absolute power of kings. The revolution created a new state of affairs which did not find in that previous situation a single base for expansion. Tradition, therefore, instead of constituting for us the starting point for subsequent progress, signified rather a negation of the principles of the revolution which was based on liberty and equality of men and of peoples; that is to say, upon the new principle of the revolutionary democracy, which, as our great sociologist says: "Leveling all conditions, it tells us that there are no differences other than those established by the law for the government of society; that the magistrate, outside of the place where he discharges his functions, is merged with other citizens; that the priest, the soldier, the lawyer, the merchant, the artisan, the rich, and the poor are all alike; that the lowest of the masses is a man equal in rights to others and carries impressed on his forehead the dignity of his origin; that only probity, work, talent, and genius produce superiority; that one engaged in the smallest industry, if he have capacity and virtues, is no less than the priest, the lawyer, or any other who devotes his faculties to some other occupation; and, in brief, that in a democratic society the only ones worthy, wise, and virtuous and entitled to consideration are those who contribute with their natural efforts to the welfare and prosperity of the country."

We had been living for three centuries under the dead weight of an almost religious respect for tradition and of the infallible authority which the old political doctrines imposed, while the moment

called for the application of the forces which have gone to make up the strength of democracy as a political principle. They called for a continuous action of reform, for the exercise of all the mental and physical activities of man, because, as a matter of fact, movement in every aspect of social life is the essence and the reason of democracy. Hence, therefore, this sentiment of profound liberalism which has always characterized our organic life, a sentiment which spontaneously exerts its influence throughout our social activity. It finds its reflection not only in our internal legislation wherein are established all the broadest doctrines which human thought has evolved in the matter of individual rights, but also in its strengthening of the principle of liberty and equality.

A consequence of this essential principle is found in the fact that Argentine life develops and has always developed looking about and to the future rather than back to the past, and in the midst of the struggle which leads to triumph rather than to the consideration of what has already been attained. If we stop to consider what a bearing that sentiment had on our legislation, we shall often find manifestations thereof in the adoption of principles which, even though related to individual rights, have some social effect in view, as for example the principle of the division of estates and of the so-called *légitime* or legal portion as opposed to that of liberty of disposing by testament or of entailing property. The principle of the legal portion in estates has for us a double effect, both of which strengthen our democratic organization. The first is that of establishing that the entity man can only produce a social effect by the application of his personal will only so long as that will is active—that is to say, while still living, while still constituting an element of society. The other effect is that of not permitting that riches accumulated by the capacity, the activity, or the good luck of a man be diverted from giving the greatest benefit possible to society. With this system of the legal portion we are endeavoring to bring about little by little the distribution of the great industrial fortunes. The number of their beneficiaries is increasing as time progresses, this being also the case with the great commercial or landed fortunes.

The individual rights corresponding to the Argentine liberalism constitute in reality the patrimony of every citizen, and a democratic organization like ours could not but adopt them in the broadest form and assure their exercise with the integrity necessary to produce the favorable social effects which spring from free and salutary individual action. It is for this reason that the principle which establishes the political equality of all citizens and the civil equality of all inhabitants, as well as the guarantees thereof, has found scrupulous expression in our fundamental laws and regulations.

This constitutional idea has been incorporated as a principle in the Argentine constitution. It prescribes that all inhabitants of the nation enjoy the following rights subject to the laws which govern their exercise, namely, to work and engage in any lawful industry; to navigate and engage in commerce; to petition the authorities; to enter, sojourn in, pass through, and leave the territory; to publish their ideas through the press without previous censorship; to use and enjoy their property; to associate for useful ends; freely to profess their religion; to teach and to learn; and as a guarantee of the exercise of

these rights the same constitution has proscribed all prerogatives based on blood or birth, as well as the existence of special privileges or titles of nobility, and has proclaimed equality as the basis of taxation and public charges; it has proclaimed the inviolability of property; it has guaranteed to the author and inventor the exclusive ownership of his work, invention, or discovery for a reasonable time commensurate with the general interests; it has proscribed forever from the Argentine penal system the confiscation of property; it has established that no armed body can make requisitions nor demand aid of any kind; it has established that no inhabitant of the nation can be punished without previous trial in pursuance with a law antedating the act for which he is tried, nor be tried by special commissions, nor be removed from the jurisdiction of the judges designated to try him by a law antedating the act, nor be compelled to testify against himself, nor be arrested except on the written order of a competent authority. It has proclaimed the inviolability of the defense in court of persons and rights, as well as the inviolability of domicile and of correspondence and private papers; it has abolished forever the penalty of death for political causes; and as to its penal institutions, it has recorded as a constitutional principle the idea that the jails of the nation must be sanitary and clean and be used for the custody of and not for punishing the unfortunate inmates thereof, holding the judge who authorizes them responsible for any measures which, under the pretext of caution, tend to mortify them beyond the requirements of such custody. And, finally, it has assured the absolute moral independence of all its inhabitants, guaranteeing the principle that the private acts of men which in no wise offend order or public morals or prejudice third persons are reserved solely to God and exempt from the authority of magistrates. Moreover, all those rights, statements, and guarantees enumerated by the constitution can not be understood in accordance therewith as a negation of other rights and guarantees not enumerated, but springing from the principle of sovereignty of the people and republican form of government.

Besides the principle of equality of rights and as a correlative thereof it has always been an Argentine constitutional idea that every citizen bears the responsibility of the national defense, and, therefore that it is his duty to take up arms in its behalf. This constitutional idea has been guaranteed by the enactment of laws which establish the principle of compulsory military service for the organization of the national army and navy, constituting in conjunction with the principles of compulsory primary education and compulsory universal suffrage the three corner stones upon which the entire structure of Argentine democracy rests, that is to say, the mental and moral vigor, together with the civic capacity and the defensive strength which constitute combined the guaranty of the organization the practice and the maintenance of democratic institutions.

I have already said that another of the great Argentine constitutional ideas, constitutional because it has its existence in the ground work of our national system as well as in the mind itself of the Argentine people, is that which springs from the humanitarianism peculiar thereto. It strengthens and develops to the utmost the sentiment of our national personality, and recognizes and respects as well

the principle of the sovereign equality of other nations, practicing, not for the sake of convenience which never determined the action of privileged organisms, but on account of the moral necessity which dominates our life, the principle of international democracy which has at every moment of our history inspired our foreign policy.

The principle has not only been recognized by its enunciation in the preamble of the constitution, when it assures the benefit of liberty to all men of the world who desire to inhabit Argentine soil, as well as to ourselves as to our posterity. It has also inspired the Argentine policy respecting the foreigner, whether manifested either in the enactment of positive law, in international relations, or in the negotiation of treaties and conventions. The constitution and the laws have declared the principle that foreigners enjoy in the territory of the nation all the civil rights of a citizen; it has likewise recognized the principle that the navigation of the inland waters of the nation is open to all flags; it has prescribed the obligation of the federal government to cement its relations of peace and commerce with foreign powers by treaties conforming to the principles of our public law; and, finally, it has thrown open the doors of all our moral and material activities to the foreigner without further restrictions than those called for by the exigencies of our social preservation, in establishing as an obligation of the Federal Government the promotion of European immigration and in forbidding it to adopt any measure tending to restrict, limit, or encumber with any tax whatsoever the entrance into Argentine territory of foreigners who come with the purpose of tilling the soil, improving industries, or introducing and teaching the arts and sciences.

It is unnecessary to tell you that an evidence of the faithful application of these principles is shown by the hundreds of thousands of men who annually come from all civilized nations to our shores to establish their homes among us and to take advantage of the opportunities offered by our natural wealth and our laws to men of good will.

This humanitarianism, which has always been an essential factor in the development of our organic life and has always determined our legislation and our policy, has not found expression solely in the precepts of our constitution or in the provisions of our laws. It also characterizes each period of our diplomatic history in so eloquent and so efficient a form that it constitutes one of the most certain elements of judgment for the study of the tendencies and characteristics of the Argentine people. This history shows that the Argentine people is an organically pacifist people, a people which as an element of civilization and of progress has the powerful intuition that only with the prevalence of peace and good will among men, and peace and good will among nations, is it possible for their ideals and aims to be maintained.

Resort to arms has never attracted their predilections, and if they have more than once been compelled to accept it as an inexorable and inevitable necessity, they have not done so either to seek a benefit or to procure an advantage, because they have never conceived any benefit or advantage which could spring from the misfortune or from the prostration which war entails. It is only the unavoidable exigencies of the national dignity or the integrity of our institutions

which could compel it to accept the calamities and consequences of a war. But war itself has served to reaffirm how intense and deep is our humanitarianism.

In the year 1864 the allied armies of Argentina, Brazil, and Uruguay entered into a war against the tyrant Francisco Solano Lopez, who then was governing the Republic of Paraguay, whose inhabitants almost without exception had been conscripted. After six years of warfare—the longest and most sanguinary ever waged on the American continent—Paraguay was reduced to the last extremity of exhaustion and weakness. And, gentlemen, the Argentine Republic, which was then in a position to impose its will upon the defeated country and fix the boundary line between the two countries, refused to take advantage of her incontrovertible superiority, and even of the much-vaunted “rights of the victor,” and in a spirit of lofty generosity acclaimed to the world the phrase that has ever since epitomized her policy: “Victory gives no rights.”

A few days later a treaty of arbitration was signed submitting the determination of the boundary line to the decision of an impartial judge, the President of the United States of America. This declaration which might be considered from a point of view with pretensions to positivism as a manifestation of sentimental and romantic weakness, was nevertheless, and embodies up to the present time, a thought of an Argentine policy. It seeks to remove from all minds any ground for misunderstanding or ill will, any pretext for suspicion tending to disturb the essential interest of our people, which consists in maintaining friendly relations with all the nations of the world upon an immovable base of moral probity, absolute loyalty and social cooperation which shall permit it to realize the essential purpose which inspires its activities in the international concert.

“Victory gives no rights” is the highest expression of our aspiration to make of the Argentine name an evocation of those sentiments and an expression of all the moral energies capable of increasing our prestige before the world.

Another manifestation of our humanitarianism may be found in the propaganda which our country has been conducting for international arbitration as a means of settling disputes between nations adopting a formula which is at the present time the highest perfection of that system. One of the most illustrious statesmen of my country thus had occasion, in 1880, as minister of foreign affairs, to affirm that arbitration had always been a noble and constant aim of our people, and that “the Argentine Government can show its adherence for a long time to that principle which wisely considers both the interests of justice and the altruistic requirements of humanity.” In fact, since 1856, when the Argentine Republic concluded with Chile her first arbitration treaty for the settlement of boundary questions pending at that time and such others as might thereafter arise, our efforts to bind ourselves with all other countries of the world through compulsory arbitration, have not ceased for a single day.

As early as 1867 our great President Sarmiento, the biographer of Lincoln and the intimate friend of Horace Mann, proposed to the Government of the United States while Argentine minister in Washington, a general arbitration treaty so comprehensive that it altered

the jurisdiction of the Federal Supreme Courts of both nations, in order to advance the cause of international justice. Sarmiento was at that time an enthusiastic champion of the peace societies which even then was endeavoring to secure the establishment of permanent tribunals for the settlement of international disputes. In 1874 the Argentine Republic solemnly declared before the whole world that "she was determined, with treaties or without treaties, to put an end by arbitration to all of her international controversies." And later until the year 1902, the Argentine Republic also submitted all of her other boundary questions to arbitration, celebrating the respective treaties with Paraguay, Brazil, and Chile, submitting always with respect to adverse decisions, even when they implied lamentable losses on more than one occasion to the integrity of the national territory. It was this manifest respect for the cause of arbitration which led a distinguished publicist and diplomat to acclaim the Argentine Republic as "the champion of arbitration on the continent."

Gentlemen, after hearing this, you will not be surprised if I affirm that my country was the first to strive for the success of a formula establishing compulsory arbitration without limitations, proclaiming and defending it in all the deliberations of international congresses and conferences in which she has participated, and finally including it in the numerous treaties of arbitration which she has entered into between 1899 and the present date. In all of them the following clauses have been inserted:

The contracting parties agree to submit to arbitration all questions of any nature that may arise between them, provided they do not affect the provisions of the constitution of either State, and can not be settled by direct negotiations.

The extent of this formula is such that it is limited only by the sacredness of the constitution. It has been described by an eminent professor in "*La Revue de Droit International*," as "the characteristic Argentine formula." It received the applause of the whole world at the second Hague conference; and when, during the sessions of that congress, the Argentine and Italian delegates signed the general arbitration treaty which now binds the two nations, its president, Count Nelidow, and the eminent Leon Bourgeois hailed it as the most advanced type of arbitration treaty that could be recommended as an example. Baron Marschall von Bieberstein, the eminent German diplomat and ambassador of Germany to that conference, also acclaimed it as the model international arbitration treaty, and the universal applause and acceptance given to the Argentine formula on that occasion was later regarded by some as the extension toward Europe of the Argentine policy on international arbitration.

And, gentlemen, I cherish the belief—perhaps in my pride as an Argentine—that it is the recognition of the moral conscience of my country, rather than her enormous economic vitality, that now and always has won for her the esteem and respect of the civilized world.

I have said elsewhere that the sentiment of Argentine national unity was always a sentiment which existed before any organization, and in that sense it may be considered as really constitutional; that is to say, capable of having a decided influence on the political constitution of the country. But if the sentiment of nationality is without doubt whatever a force of great import in the maintenance of the

political unity of the country, its preservation and its development call for something more than that sentiment. That is to say, it requires a strengthening by the organization of a government which, while subserving all exigencies, shall be capable of directing its progress, overcoming difficulties, and cultivating to the utmost its organic capacities. It is for this reason that the preamble of our constitution sets forth as the primary object of its framers, that of "constituting the national union," not because such union did not exist, but because notwithstanding its existence in the sentiment and aim of all the people, it had not been established, it had not been organized under the auspices of an efficient government, but on the contrary its existence had been threatened by the errors of men, by the exigencies of the revolution of independence, which had not permitted ideas of organization to mature, and by the circumstances which prevailed throughout 30 years of tyranny that we had to bear just when we came out from the period of our revolution. All these circumstances tended to submerge the country into anarchy, and as a result threatened to destroy the prevailing desire for our national union. Fortunately the patriotism of our forefathers brought about a favorable crisis, and the constituent convention of the year 1853 was enabled by the enactment of the constitution which now guides us to strengthen what was an Argentine constitutional sentiment, and to convert it into the principle and constitutional idea of national union.

The first article of our constitution provides that the Argentine nation adopts as its Government a representative Federal republican form. Hence the necessity of organizing a government corresponding to the representative form, of guaranteeing the principles the republican form calls for, and, finally, of organizing the political government of the country as called for by the exigencies of federalism. We have already seen that all the principles which characterize and define the political equality of citizens are guaranteed by our constitution, carrying out the constitutional idea of our republicanism.

Let us now see how these other fundamental principles established as a basis of our Government have been carried out. The nature of this address does not admit of my entering into the interesting details further than to give an idea of the evolution of the Argentine federalist sentiment until it became crystallized into an essential element of our form of government; but suffice it to say that it never conflicted with the national sentiment, since its origin was rather sentiment of regionalism which, in satisfying its own local tendencies and necessities, counted with the support and cooperation of the nation. Hence it is that in all the separate organizations of government which took place in the Provinces during the period of disorganization and anarchy, the direction of international affairs was uniformly turned over to the Government of Buenos Aires, as a means of emphasizing the idea of the existence of the national state from which the idea of the existence of the Provinces was derived. This accounts for the fundamental difference between the character of Argentine federalism and the features of American federalism.

In the latter, the nation springs from the will of the people of the States; in the former, the States spring from the will of the people.

of the nation. A consequence of this prevalence of the national idea over the local idea is the Argentine constitutional principle which establishes the uniformity of the civil, commercial, penal, and mining laws, as well as of the general laws relating to naturalization and citizenship, bankruptcy, and the forgery of the currency and public documents of the State, and the power exclusively vested in Congress to establish the boundaries of the Provinces and to authorize the calling out of the militia, and its organization, armament, and discipline, without prejudice to leaving the application of those codes to the local tribunals when the things or persons affected come under their respective jurisdiction, and without prejudice to leaving to the local governments also the appointment of the respective field and line officers of the militia and the task of establishing therein the discipline prescribed by Congress. Furthermore, and even though Congress has no intervention in the enactment or approval of the local constitutions, each Province has the obligation of framing its own constitution on the basis of the representative republican system, in pursuance of the principles, declarations, and guaranties of the national constitution, and to assure therein administration of justice, the municipal governments, and primary education. It is only subject to these conditions that the Federal Government guarantees to each Province the enjoyment and the exercise of its institutions. Besides, the provincial governors are constitutionally the agents of the Federal Government in the enforcement of the constitution and the laws of the nation.

Coming now to the characteristics of the Government itself, let us see how it was organized. In the first place it ought to be unnecessary to say that the principle of the division of powers always underlay all attempts toward political organization in our country, inasmuch as it was the doctrine of the French Revolution and the fruitful examples of American independence which exercised the strongest influence on our initial organic action.

As a matter of fact the organization given by the American Constitution to the various departments of the Government served as a model to the framers of our constitution of 1853, with some differences relating to the organization and operation of the executive power, as we shall see. Thus our legislative power reveals in the constitution of its two chambers the Federal principle of our institutions, the idea of a national unity being reflected in a Chamber of Deputies, the genuine representation of the people of the nation, elected therefor in proportion to the population of the country as a whole, and in a Senate composed of two representatives for each State and two for the Federal capital, the former representing the local autonomy of each State.

The recognition of the right of the Federal capital to send its deputies and senators like any other Province, a right not enjoyed by the American capital, is due to reasons of a historical nature which brought about a political necessity of which it is not my purpose to treat on this occasion. This is the only detail of the organization of the legislative power which differentiates the Argentine Congress from its great model, the American Congress, if we do not consider the form of election of the Senators and Deputies, the former being

elected by the legislatures in each Province, as were formerly the American Senators, and the latter by the method of the election of partial tickets in order to guarantee the minority a permanent representation of one-third in the Chamber of Deputies.

With regard to the judicial power, its organization has also followed our great model, the American Constitution, being organized in a national supreme court of justice, with the characteristic power of declaring the constitutionality or unconstitutionality of laws, decrees, or regulations, and consisting of the other Federal courts necessary to fulfill the functions vested in them by the respective constitutional provisions throughout the territory of the nation.

This power has furthermore been organized upon the principle of the permanent incumbency of judges during good conduct and the nonreduction of their salaries while on the bench. This principle of permanent incumbency of judges, adopted for the purpose of assuring their independence, has been and is considered as fundamental in our political organization, and it may be affirmed that it also is one of the Argentine constitutional ideas, not only by reason of its adoption by the fundamental charter, but also by reason of constituting one of the convictions of the national conscience, not only on the political doctrine but also on the experience of our national justice and on the profound respect and dignity which it enjoys and always has enjoyed in Argentine public opinion.

With respect to the executive power, an analysis of its organization shows, to my mind, some essential differences from the features of the American, inasmuch as ours does not in fact follow the principle of presidential government, nor the parliamentary principle. Consisting of a President and eight ministers, who must act inseparably, this power sometimes shows the most commendable features of the presidential system, by the power vested in the President of the Republic to retain his ministers even against the will of the Congress, and at other times the most commendable characteristics of the parliamentary system. Through the former, advantage has been taken of the benefits accruing from the independence of the executive power, and through the latter the degeneration of that independence into license has been prevented, its responsibility to the people being enforced at all times throughout its action of government, by means of the right of either legislative chamber to call the ministers before it for the purpose of reporting to it on any matter of public order, thus permitting public opinion to know the reason underlying any political or administrative act of the executive power in its various departments. Moreover, the executive power has the right to participate in any legislative debate in the Congress whenever it so desires. The term of the executive power is limited to six years, and the President can not be reelected except after an interval of one term. The acts of the executive power must be joint acts of the President and the minister of the respective department, or of the President and Cabinet as a whole, such acts not having any force unless the signature of the minister or of the Cabinet gives evidence of such joint action. Furthermore, the ministers of the executive do not owe their existence to the law, but to the constitution itself, and are, therefore, constitutional officials with the same responsibility as the

President and, like him, subject to impeachment. Hence the latter official in addition to discharging the functions which correspond in the parliamentary system to the prime minister or President of the cabinet, is likewise the representative head of the State.

Gentlemen, I must now conclude, but not without taking this opportunity to pay before you, distinguished coworkers in the organic expansion of this great country, the homage and express the admiration which every Argentine citizen feels for the illustrious founders of the American Union. From the Constitution of 1787 our heroes got the most profound political inspiration. It became for us an example and a model of republican virtues and democratic ideals, guiding in great measure the glorious expansion of our forces in this strenuous march toward the highest possible culminations, a fatiguing but steady march, but to which we are forced by the record of our past, the vigorous achievements of our present, and the energy of our aspirations for the future.



